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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,451	02/19/2004	Hans-Peter Foser	IVd15US	5190

7590

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EXAMINER

WERNER, JONATHAN S

ART UNIT PAPER NUMBER

3732

DATE MAILED: 03/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/782,451

Applicant(s)

FOSER ET AL.

Examiner

Jonathan Werner

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO 1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/19/04, 11/4/04, 1/5/05, 1/19/06
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The information disclosure statements (IDS) submitted on 2/19/04, 11/4/04, 1/5/05, and 1/19/06 are noted. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 5, 6, 11, 13, 16 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 recites the limitation "the teeth." There is insufficient antecedent basis for this limitation in the claim. Claim 6 recites the limitation "the respective teeth." There is insufficient antecedent basis for this limitation in the claim. Claim 11 recites the limitation "the ceramic." There is insufficient antecedent basis for this limitation in the claim when ceramic is not chosen

Art Unit: 3732

according to claim 9. Claim 13 recites the limitation "the plastic." There is insufficient antecedent basis for this limitation in the claim when plastic is not chosen according to claim 9. Claim 16 recites the limitation "the respective tooth." There is insufficient antecedent basis for this limitation in the claim. Claim 19 recites the limitation "the location." There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 5, 6, 16 and 18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims appear to recite part of the human body, i.e. the teeth, in combination with the structure of the claimed invention. It has been held that a claim directed to or including within its scope, a human being will not be considered to be patentable subject matter under 35 USC 101. The grant of limited, but exclusive property right in a human being is prohibited by the Constitution. *In re Wakefield*, 422 F.2d 897, 164 USPQ 636 (CCPA 1970). Applicant needs to clearly state using inferential language that the human anatomy is not claimed. For examination purposes, the claims will be considered as if such limitations involving the combination with a human were not present.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-10, 12-24 and 26-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Braiman (US 5,346,397). As to claims 1 and 20, Braiman discloses a dental restoration comprising a base structure (13) adapted to be placed over a prepared tooth stump (column 3, lines 53-54); a pre-fabricated (column 4, lines 5-6) over structure (10) which partially covers the base structure when assembled (Figure 3), wherein the over structure has at least one pre-configured bite element (top portion, Figure 3); and a coupling element for coupling the base structure and the over structure with one another (Figure 3), the coupling element including an interconnecting material (14) which interconnects the base structure and the over structure. As to claim 2, the over structure includes a covering element (11) that is interconnected with the bite element and covers over at least one of a lingual, buccal, mesial, and distal region of the base structure, the covering element being interconnected to the base structure via the interconnecting material (Figure 3). As to claim 3, the interconnecting material extends in a surface covering manner between the base structure and the over structure and the interconnecting material fills the area between the base structure and the over structure (Figure 3). As to claims 4 and 21, Figure 3 shows the over structure has a an inner contour that is compatibly configured with respect to an outer contour of

the base structure; and the inner contour of the over structure and the outer contour of the base have respective circular shapes. As to claim 5, the bite element extends over the teeth of a dental patient receiving the restoration and is configured as a single member component (Figure 3). As to claim 6, it can be seen from Figure 3 that the covering element extends to preparation borders of the teeth and the covering element covers the medial and distal sides of the teeth. As to claims 7 and 24, the overstructure partially covers the base structure and the uncovered portion of the base structure is covered by an opaque material (column 3, lines 50-51). As to claims 8 and 26, Figure 3 shows the over structure partially covers the base structure and the uncovered portion of the base structure is covered by the interconnecting material. As to claims 9 and 10, the over structure is formed by the bite element and the covering element and the covering element is comprised of ceramic (column 4, line 29-31) or plastic (column 3, lines 63-64). As to claim 12, the interconnecting material is comprised of ceramic (column 3, lines 50-51). As to claim 13, the plastic is a polymerizable plastic (column 3, line 64). As to claim 14, the base structure is a metal frame (column 3, line 50). As to claim 15, Figure 13 shows the dental restoration is configured for a pre-molar or a molar. As to claim 16, the bite element of the overstructure forms a tooth protuberance (Figure 3). As to claim 17, the over structure is a single member component and the bite element and the covering element are comprised of the same material (Figure 3). As to claim 18, the base structure is securable to a tooth stump of a patient (column 3, lines 52-54). As to claims 19 and 27, Figure 3 shows that the base structure is capable of being securable to a peg supported by a jaw of a patient and an attachment element

Art Unit: 3732

(11) operable to be secured to neighboring tooth structures. As to claim 22, Figure 3 shows the step of pressing the over structure onto the interconnecting material. As to claim 23, the interconnecting material is hardened by heating (Abstract).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Braiman in view of Fisher (US 6,183,256). Braiman discloses the dental restoration as previously described but fails to disclose the ceramic is a selected one of an aluminum oxide ceramic, a zirconium oxide ceramic, a glass ceramic, and a mixture of such ceramics. Fisher, however, teaches a dental restoration with a covering element (20) that is made of aluminum oxide ceramic or zirconium oxide ceramic (column 1, lines 40-47 & column 2, lines 19-34). Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to use either an aluminum oxide ceramic or zirconium oxide ceramic as the material of choice in order to promote secure bonding as taught by Fisher.

7. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Braiman in view of Sozio et al. (US 4,585,417). Braiman discloses the dental restoration as

Art Unit: 3732

previously described but fails to disclose evaluating a prospective bite situation and manipulating the base structure and over structure relative to one another in an evaluation device such as an articulator. Sozio, however, teaches a method of making dental restorative device (Abstract) that is manipulated by using an articulator (column 7, lines 60-64) to simulate jaw movement and hence evaluate a prospective bite situation. Therefore, it would have been obvious to one having ordinary skill in the art at the time of applicant's invention to evaluate a prospective bite situation and manipulate the base structure and over structure relative to one another using an articulator in order to simulate proper jaw movements as taught by Sozio.

8. Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Braiman. Braiman discloses the dental restoration as previously described but fails to disclose the step of cleaning a spillover of interconnecting material after the step of pressing the over structure onto the material. However, it would be an obvious matter of choice to one having ordinary skill in the art at the time of applicant's invention to clean said spilled interconnecting material so that desired shape of the dental restoration can be preserved in order to properly fit it within a patient's mouth.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please refer to included form PTO-892 for all additional pertinent prior art related to dental restorations.

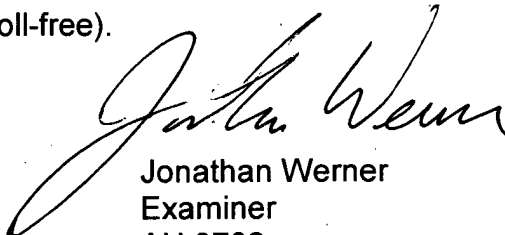


Art Unit: 3732

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Werner whose telephone number is (571) 272-2767. The examiner can normally be reached on Monday-Friday.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jonathan Werner  
Examiner  
AU 3732

3/10/06



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PRIMARY EXAMINER